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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,621	10/28/2003	Stefan Kiefer	13914-016001 / 2003P00626	3903
32864 7590 07/07/2010 FISH & RICHARDSON, P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
FADOK, MARK A				
ART UNIT		PAPER NUMBER		
3625				
NOTIFICATION DATE		DELIVERY MODE		
07/07/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary

Application No.

10/695,621

Applicant(s)

KIEFER ET AL.

Examiner

MARK FADOK

Art Unit

3625

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-12, 17-20 and 28-31 is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 13-16 and 21-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Appeal Brief Filed 4/15/2010

The examiner is in receipt of applicant's response to office action mailed 6/5/2009, which was received 4/15/2010. The Appeal Brief has been carefully reviewed and was found to be persuasive. The examiner provided a proposed amendment as is stated in the interview summary mailed 6/7/2010, however, Mr. Soderberg indicated in a 6/11/2010 voice mail that the applicant was not interested in the proposed change at this time. The examiner reassessed the claims as currently provided and determined that the arguments provided were persuasive regarding claims 13-16, and 21-27, but that claims 28-31 were modified in the 2/20/2009 amendment to change claim 28 from a buyer driven bidding method to seller driven buying method. Mr. Soderberg was contacted and asked if the applicant was interested in canceling claims 1-12 and 28-31 as proposed in this response. The examiner explained in a message that claim 28 was confusing in that the first receiving step indicated that an owner of an item seeks bids and then in the second receiving step a buyer is accepting a bid proposal, however, for the purpose of this office action the examiner is considering the claim to be a seller driven method and therefore a distinctly different invention from the elected invention described in claims 13-27. Mr. Soderberg once again indicated that the applicant was not interested in considering the examiner's proposal at this time and indicated that no USC 112 rejection was provided in the 6/12/2009 rejection and that the applicant wishes to proceed with the appeal. In order that the applicant better understand the examiner's position the following new ground of rejection necessitated by the 2/20/2009 amendment follows:

Election/Restrictions

Newly submitted amended claims 28-31 provided in the 2/20/2009 amendment are now directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Applicant's amendment filed 2/20/2009 changed the scope of the claims from a buyer driven bidding method to one that seeks to claim a seller driven bidding method where the seller seeks bids from a buyer, where as claims 13-27 are directed to a buyer driven method where the buyer seeks bids.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 28-31 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter: Claims 13-16 and 21-27 are allowable based on the arguments provided in Appeal Brief received 4/15/2010, however, claims 1-12, and 28-31 as presented must be canceled because they are drawn to different inventions. Claims 17-20 are species of independent claim 13 and will be fully examined for potential rejoinder should applicant choose to cancel claims 1-12 and 28-31 as herein proposed.

Response to Arguments

Applicant's arguments with respect to claim13-14 and 21-31 provided in the 4/15/2010 Appeal Brief have been considered but are moot in view of the new ground(s) of rejection necessitated by the 2/20/2009 amendment.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300 [Official communications; including
After Final communications labeled
"Box AF"]

For general questions the receptionist can be reached at
571.272.3600

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Mark Fadok/

Mark Fadok

Primary Examiner, Art Unit 3625